

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO 822 OF 1997
IN
SPECIAL CIVIL APPLICATION NO 5349 of 1984

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

KK SHAH-CONVENER FAMILY PLANNING CENTRE
Versus
BHAGWANJI T. KARIA

Appearance:

1. LETTERS PATENT APPEAL No. 822 of 1997
MR SM MAZGAONKAR for Appellant No.
RULE SERVED for Respondent No. 1-1/3
MR AP BHATT, AGP, for Respondent No. 2-3
SERVED BY RPAD - (N) for Respondent No. 4
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CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 21/07/2004

1. The Appellant - original petitioner - Family Planning Centre, Indian Medical Association, Gujarat Branch, Ashram Road, Ahmedabad, had filed Special Civil Application No.5349 of 1984, before this Court under Article 226 of the Constitution and challenged the impugned order dated 23.8.1984, passed by the Appellate Authority, confirming the impugned order dated 30.4.1982, passed by the Controlling Authority, in favour of the original respondent No.1 Shri Bhagwanji T. Karia, whereby the Controlling Authority held that the payment of Gratuity Act, 1972, was applicable to the petitioner Institution and it was ordered to pay the gratuity of Rs.6252/- to the original respondent No.1. The Appellant - original petitioner had also prayed in its writ petition to issue a writ of mandamus or any other writ, order or direction, directing the respondents No.2 & 3, the Director of Family Planning and the Secretary, Panchayat and Health Department, Government of Gujarat respectively, to make payment of gratuity payable to the respondent No.1 and to further direct them to make the Grant available to the petitioner Institution in respect of any lawful liability arising out of the Labour Legislations in respect of the employees of the Family Planning Centre run by the Institution.

2. The learned single Judge of this Court (S.K. Keshote, J.) by his Judgment and order dated 25.6.1997 dismissed Special Civil Application of the appellant petitioner with special cost of Rs.1000/- to be paid to the legal heirs of Respondent No.1. Going through the Judgment and order dated 25.6.1997, passed by the learned Single Judge, dismissing the writ petition of the Appellant - petitioner, it appears to us that the learned Single Judge considered the challenge of the petitioner against the impugned orders dated 30.4.1982 passed by the Controlling Authority and 23.8.1984, passed by the Appellate Authority in favour of the original respondent No.1 and for the reasons recorded in the Judgment dismissed the said challenge. However, it seems that the learned Single Judge has not recorded any findings qua another challenge made in Para : 9(b) of the petition of issuing direction to the respondents No.2 & 3 to make payment of gratuity payable to the respondent No.1 and to further direct them to make grant available to the petitioner Institution in respect of any lawful liability arising out of Labour Legislation in respect of its employees.

3. From the memo of present LPA it appears that the appellant has not challenged the Judgment and order dated 25.6.1997, passed by the learned Single Judge, dismissing its first challenge against the impugned orders dated 23.8.1984, passed by the Appellate Authority. Though there was a specific prayer made by the petitioner Institution in Para : 9(b) somehow or the other the learned single Judge has not answered it nor there is any discussion in the Judgment qua the second relief. Hence, the present appeal on following grounds :

(1) BECAUSE the learned Judge has committed an error of law in not considering the prayer 9(b) whereby the petitioner had prayed for a relief of mandamus directing the payment of gratuity payable to the respondent No.1, on the basis of the decision rendered by this Hon'ble Court in 1996 (1) GLH 518;

(2) BECAUSE the learned Judge has overlooked the fact that the State Government was requested to reimburse about the payment of gratuity. But the State Government has refused to do so and since there was refusal on the part of the State Government to do so, the petitioner had applied for such relief before this Hon'ble Court;

(3) BECAUSE the learned Judge has committed an error of law in not dealing with the submissions of the petitioner based upon 1996(1) GLH 518;

4. Though served no one appears for the heirs of original respondent No.1 and rightly so, because there is no prayer made in the present Appeal against them. As stated earlier, the present Appeal is restricted to the second prayer made by the petitioner in its petition, but the LRs of the respondent No.1 were there as party in the main petition, therefore, it seems that they were joined as party respondent in this Appeal as well. Be that as it may.

5. In the case of SAMUEL JOSEPH VAMESHA v/s. STATE OF GUJARAT ANR. REPORTED IN 1996 (1) GLH 518, the learned Single Judge of this Court (M.R.Calla, J., as he then was), while considering similar point, issued direction to the respondent State of Gujarat and two others to remit due amount of gratuity.

6. In the instant case the Appellant - petitioner

also made alternative prayer in Para : 9(b) before the learned Single Judge in the writ petition but, unfortunately, the learned Single Judge has not dealt with the same nor considered it in his Judgment. The prayer : 9(b) reads as under :

(b) Your Lordships will be pleased to issue a writ of or in the nature of mandamus or any other writ, order or direction directing the respondent Nos.2 and 3 to make payment of the gratuity payable to the respondent No.1 and further directing them to make the grant available to the petitioner Association in respect of any lawful liability arising out of the Labour Legislations in respect of the employees of the Family Planning Centre run by the Association.

7. We have already narrated the relevant grounds of this Appeal hereinabove. The only prayer survives in this Appeal is to direct the State Government to reimburse the payment of gratuity. The similar prayer was granted by the learned Single Judge of this Court in the case of SAMUEL JOSEPH (supra) and the said Judgment is accepted by the State Government and not carried in Appeal, as informed by the office, then in our considered opinion the present Appeal is required to be allowed.

8. Accordingly, this Appeal is allowed in terms of the Judgment of the learned Single Judge of this Court in SAMUEL JOSEPH (Supra) reported in 1996 (1) GLH 518 and the prayer : 9(b) of the writ petition No.5349 of 1984 is granted. The Appeal is allowed accordingly. No order as to costs.

(B.J.Shethna, J.)

Date : July 21, 2004

(M. C. Patel, J.)

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